



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2005-0045

IN THE MATTER OF:

**CITY OF WESTMINSTER**

Denver of Public Works & Utilities

4800 West 92<sup>nd</sup> Avenue

Westminster, CO 80031

**RESPONDENT**

**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

1 August 30, 2005  
DATE

Alfred C. Smith  
Alfred C. Smith  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION VIII

FILED  
EPA REGION VIII  
HEARING CLERK

Docket No. CWA-08-2005-0045

**IN THE MATTER OF:**

City of Westminster  
Department of Public Works & Utilities  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

**Respondent**

**Complaint and  
Consent Agreement**

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and the City of Westminster ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

**Introduction**

1. The Administrator of the EPA has determined that an administrative penalty action is appropriate for the period of violations alleged below.
2. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties set forth at 40 C.F.R. Part 22.
3. Therefore, EPA has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g) and is authorized to issue civil administrative actions and assess civil penalties for violations of the CWA.
4. EPA and the Respondent (collectively referred to as the "parties") have agreed to the settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b),

and to execute this Complaint and Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) for the purpose of simultaneously commencing and concluding this matter upon the issuance of a Final Order.

5. Respondent, the City of Westminster, is a city created by or under Colorado State law and is therefore a "municipality" within the meaning of section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 503.9(o), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(q) for purposes of federal enforcement.

6. Respondent owns and/or operates a Publicly Owned Treatment Works (hereinafter, the "Facility") as defined in 40 C.F.R. § 501.2, located in Westminster, Colorado, which is a "treatment works" as defined in Section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A), and 40 C.F.R. § 503.9(aa).

7. Section 405 of the Act, 33 U.S.C. § 1345, and the regulations found at 40 C.F.R. part 503, govern the disposal or use of sewage sludge.

8. Respondent is subject to section 405 of the Act, 33 U.S.C. § 1345, and 40 C.F.R. part 503, because it is a person who prepares sewage sludge, as defined at 40 C.F.R. § 503.9(w), and is an owner and/or operator of land application sites as defined at 40 C.F.R. 503.9(a).

9. The Facility is a "Class I sludge management facility" as defined in 40 C.F.R. § 503.9(c).

10. Treatment of domestic sewage at the Facility is composed of an extended aeration system followed by clarification and chlorination. Sewage sludge is further treated through anaerobic digestion of solids, which are belt pressed prior to land application.

11. Respondent generates sewage sludge during the treatment of domestic sewage in a treatment works and is, therefore, a "person who prepares sewage sludge" within the meaning of 40 C.F.R. § 503.9(r).

12. Section 405(d) of the Act, 33 U.S.C. § 1345(d) authorizes EPA to develop regulations that identify uses for sewage sludge, including disposal; specify factors to be taken into account in determining measures and practices applicable to each such use or disposal; and identify concentrations of pollutants which interfere with each such use or disposal.

13. Management practices described in 40 C.F.R. § 503.14(d) state that bulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

14. EPA issued a general permit pursuant to Section 405(d) of the Act, 33 U.S.C. § 1345(b) and 40 C.F.R. Part 503, effective on August 16, 2002, for facilities in Colorado and Indian country that generate, treat, and/or use or dispose of sewage sludge by land application, landfill, and surface disposal.

15. Respondent applied for coverage under the General Biosolids Permit on November 12, 2002. Respondent was issued general permit number COG-650024, which became effective as of December 11, 2002 and will expire on August 16, 2007.

16. Part 4.1.4.6 of the General Biosolids Permit states that soil monitoring for nitrate-nitrogen is required for all land application sites where sewage sludge has been land applied during the life of this permit except when prior written approval is granted by the permit issuing authority.

17. Part 4.2.4 of the General Biosolids Permit requires that application of sewage sludge shall be conducted in a manner that does not exceed the agronomic rate for available nitrogen of the crops grown on the site unless prior written approval is given by the permit issuing authority.

18. Reporting requirements for the General Biosolids Permit part 8.4 require that the permittee shall submit an annual report, by no later than February 19th of each year. The report shall include the results of all monitoring performed in accordance with parts 3.2, 4.1, 5.1, 6.1, and 7.1 of the permit and the required information on pathogen and vector attraction reduction requirements, management practices, land application sites, site restrictions, and the required signed certification statements. If no sewage sludge was generated, treated, and/or used/disposed of during the reporting period, "no sewage sludge was generated, treated, and/or used/disposed" shall be reported.

19. EPA received a revised biosolids annual report on May 4, 2004 dated April 20, 2004 from the City of Westminster to correct inaccuracies in its initial 2003 biosolids annual report dated February 19, 2004, which was received February 20, 2004. The information for biosolids production found in the initial annual report did not change with the revised version, but revisions were made to the land application information. No information was provided in either annual report for land application sites that had crop failure.

20. Part 4.2.9 of the General Biosolids Permit states if the planned crop is not grown or there is significant crop failure in the next available growing season after the application of sewage sludge, the annual report shall include the following information for that site:

- a. Crop grown;
- b. Nitrogen requirements for crop grown;
- c. Amount of nitrogen applied in sewage sludge; and
- d. Results of agronomic rate calculations based on crop actually grown.

21. Part 8.6.1 of the General Biosolids Permit requires the permittee to report any noncompliance, including transportation accidents spills, and uncontrolled runoff from sewage sludge transfer sites, storage sites, or land application sites, etc., which may seriously endanger health or the environment, as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances.

22. On September 1, 2004, an administrative order for compliance ("Order"), Docket No.: CWA-08-2004-0066 was issued to the City of Westminster and the Big Dry Creek Reclamation Plant ordering the Respondent to submit a draft Biosolids Management Plan that includes current biosolids practices and a five (5) year biosolids operating plan and agronomic rate calculations (including all steps used for calculations and all required data) for all fields land applied to in 2002, 2003 and 2004. This report was submitted on October 29, 2004.

### **Allegations**

23. According to information submitted on November 1, 2004 by the Respondent, the Respondent over-applied biosolids to 11 land application sites from 2002 to 2004. The biosolids agronomic loading rate calculated using the EPA Biosolids Management Handbook Section 3 for these sites was consistently lower than the actual biosolids loading rate applied. Three of the sites where the Respondent land applied had EPA recommended biosolids agronomic target loading rate of zero.

24. Application of biosolids at a rate that exceeds the total recommended nitrogen calculated without prior written approval from the permit issuing authority is a violation of the General Biosolids Permit part 4.2.4, 40 C.F.R. § 503.14 (d) and Section 405(d) of the Act, 33 U.S.C. § 1345(d).

25. The noncompliance detailed above was not reported to the EPA within 24 hours from the time the Respondent first became aware of the circumstances.

26. Failure to report noncompliance with the requirements of the permit to the EPA is a violation of the General Biosolids Permit part 8.6.1.

27. A memorandum from a county inspector dated March 11, 2004, recounts that Respondent stated that "last year's crop (2003) was dryland corn, but the crop failed due to drought" at land application site RW-23-1-320.

28. Crop failure information described above for land application site RW-23-1-320 was not reported in either the initial annual report or the revised annual report submitted to the EPA.

29. Failure to report crop failure information to the EPA is a violation of the General Biosolids Permit part 4.2.9.

### **Settlement**

30. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations and violations alleged herein.

31. Respondent waives the right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

32. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agrees that entry of this Complaint and Consent Agreement Final without further litigation is the most appropriate means of resolving this matter.

33. This Complaint and Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon the Respondent and Respondent's employees.

34. This Consent Agreement contains all terms of the settlement agreed to by the parties.

### **Civil Penalty**

35. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA has determined that an appropriate civil penalty to settle this action is the amount of Forty Thousand Dollars (\$40,000) in addition to an expenditure of at least Seventy-Five Thousand Dollars (\$75,000) for a Supplemental Environmental Project(s) (SEP). In conjunction with paragraphs 30 and 32 of this Consent Agreement, Respondents agree to pay a \$40,000 civil penalty and spend no less than \$75,000 on one or more SEP.

36. Respondent consents, for the purpose of settlement, to the issuance of a Complaint and Consent Agreement and to the payment of the civil penalty cited in the foregoing paragraph. Respondent also consents, for the purpose of settlement, to the performance of the SEP described below.

37. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).



38. Within thirty calendar days of receipt of the Final Order issued by the Regional Judicial Officer, Respondent shall pay the agreed upon civil penalty in the amount of Forty Thousand Dollars (\$40,000) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

EPA Region 8  
Regional Hearing Clerk  
P.O. Box 360859M  
Pittsburgh, PA 15251

The check shall reference the Respondent's name and facility address and the EPA Docket Number of this action. A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis  
Regional Hearing Clerk, Mail Code: 8RC  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and

Aaron Urdiales  
Environmental Scientist, Mail Code: 8-ENF-W-NP  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

### **Supplemental Environmental Project**

#### 39. Description of the SEP:

- a. Respondent shall undertake the performance of two SEPs: a Biosolids Workshop and restoration of a section of Little Dry Creek. The Biosolids Workshop will be open to State Municipalities, Special Districts, and Commercial biosolid applicators and will be free to all participants. Third party expert speakers will present topics such as the legal framework for the biosolids regulations, the biosolids management plan, calculations, recordkeeping, and the use of GPS in biosolids application. Training units will be applied for through the Colorado Operators Certification Board.
- b. The restoration of a section of the little Dry Creek will take place west of Federal Boulevard, at approximately 68<sup>th</sup> Avenue and Green Court. This project will involve cleaning, regrading and stabilization of the channel, along with erosion control check structures to protect sanitary sewer lines exposed in the creek. The cost of this project will be added to funds approved by the Board of Directors of Urban Drainage and Flood Control District (UDFCD) in the Maintenance Work Program. The design and implementation will be developed with UDFCD.
- c. Respondent shall complete the work not more then one (1) year from the date of the Final Order in this matter unless the parties agree in writing to an extension of the completion date.

40. The total expenditure for the SEP shall not be less than Seventy-Five Thousand Dollars (\$75,000) with Twenty-Five Thousand Dollars (\$25,000) going towards the Biosolids Workshop and Fifty Thousand Dollars (\$50,000) towards the restoration of a section of Little Dry Creek. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

41. Respondent hereby certifies that, as of the date of this Complaint and Consent Agreement, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements.

42. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

43. SEP Reports

- a. Respondent shall submit a final project work plan that fully outlines the scope of the project(s), including a schedule of work and cost estimates, for EPA approval within seventy-five (75) calendar days of receipt of the Final Order.
- b. Respondent shall submit a SEP Completion Report to EPA within thirty (30) calendar days following completion of each SEP. The SEP Completion Report shall contain the following information:
  - i. A detailed description of the SEPs as performed, which should include for example the list of attendee's and site photos;
  - ii. A description of all topics presented and any operating, implementing or performance problems encountered during restoration and the solutions thereto;

- iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
  - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Complaint and Consent Agreement.
- c. Respondent agrees that failure to submit the SEP Completion Reports or other reports required by this paragraph, shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees in accordance with paragraph 50 below.

45. Respondent agrees that EPA may inspect the location where the SEP is being performed at any time in order to confirm that the SEP is being constructed and/or implemented consistent with the final project work plan, schedule of work and representations made herein.

46. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement, and shall provide the documentation of any such underlying research and data to EPA within seven (7) calendar days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and

imprisonment.

47. EPA acceptance of SEP Reports

- a. Following receipt of any of the SEP Reports described in paragraph 43 above, EPA will do one of the following: (i) accept the SEP Report; (ii) reject the SEP Report with notification to Respondent in writing of deficiencies in the SEP Report and grant Respondent an additional thirty (30) calendar days in which to correct any deficiencies; or (iii) reject the SEP Report and seek stipulated penalties in accordance with paragraph 50 herein.
- b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) calendar days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) calendar days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) calendar day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Complaint and Consent Agreement.

48. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

49. Respondent shall submit by first class mail all notices and reports required by this

Consent Agreement to:

Aaron Urdiales  
Environmental Scientist, 8ENF-W-NP  
U.S. Environmental Protection Agency, Region 8  
999 18th St., Suite 300  
Denver, Colorado 80202-2466

#### **SEP Penalty**

50. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described in paragraph 39 above and the EPA approved work project plan described in 43 above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure described in paragraph 40 above, Respondent shall be liable for the full penalty amount of Seventy-Five Thousand Dollars (\$75,000) agreed upon for the SEP. Interest on the penalty amount shall be collected as described in paragraph 37 above.

#### **General Provisions**

51. This Complaint and Consent Agreement shall not relieve Respondent of the obligation to comply with all applicable provisions of federal, state or local law.

52. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

53. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its

authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

54. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

55. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

56. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Consent Agreement.

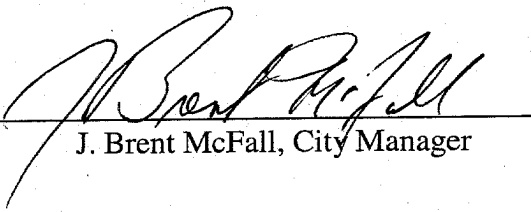
57. This Consent Agreement resolves Respondent's liability for federal civil penalties under sections 309(g) of the CWA, 33 U.S.C. § 1319(g), for the alleged violations contained in this Consent Agreement and the Order issued on or about September 1, 2004, Docket No.: CWA-08-2004-0066. This Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

City of Westminster,  
Respondent

Date: 8/18/05

By: \_\_\_\_\_

  
J. Brent McFall, City Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Complainant

Date: 8/22/05

By: Eddie A. Siem  
for Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

Date: 8/22/05

By: David Janik  
Michael T. Risner, Director  
David Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

Date: August 22, 2005

By: Marc Weiner  
Marc Weiner, Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice



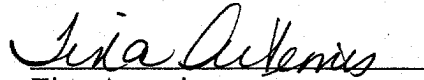
## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND EXPEDITED CONSENT AGREEMENT** in the matter, **DOCKET NO.: CWA-08-2005-0045** was filed with the Regional Hearing Clerk on August 23, 2005, the **FINAL ORDER** was filed on August 30, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 30, 2005, to:

J. Brent McFall, City Manager  
Department of Public Works & Utilities  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

August 30, 2005

  
Tina Artemis  
Regional Hearing Clerk



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